SUPREME JUDICIAL COURT OF MASSACHUSETTS

Drakopoulos v. U.S. Bank National Ass'n

465 Mass. 775 (2013) · Decided July 12, 2013

SUMMARY

The Massachusetts Supreme Judicial Court held that U.S. Bank, as assignee of a potentially high-cost mortgage loan, was not shielded from liability as a matter of law for claims arising from the loan's origination. The court concluded that disputed material facts precluded summary judgment on claims under the Predatory Home Loan Practices Act, G. L. c. 183C, G. L. c. 93A, the Borrower's Interest Act, and unconscionability. Summary judgment for the loan servicer was affirmed, while judgment for U.S. Bank was vacated and the matter remanded.

CASE DETAILS

COURT	Supreme Judicial Court of Massachusetts
WRITING FOR THE COURT	Lenk, J.
JURISDICTION	Massachusetts
DECIDED	July 12, 2013
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The plaintiffs appealed from Superior Court summary judgment for the defendants on claims arising from a predatory mortgage loan and foreclosure. The Supreme Judicial Court granted direct appellate review.
STANDARD OF REVIEW	Summary judgment is reviewed de novo. The evidence and reasonable inferences are viewed in the light most favorable to the nonmoving party; the moving party must establish the absence of a genuine issue of material fact and entitlement to judgment as a matter of law.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Susanne Drakopoulos, Peter Drakopoulos v. U.S. Bank National Association, as trustee of the Credit Suisse First Boston Mortgage Securities Corp., Home Equity Pass-Through Certificates, Series 2007-1, Select Portfolio Servicing, Inc.

TOPICS

predatory lending · consumer protection · mortgages · summary judgment · civil procedure

PRACTICE AREAS

consumer protection · real estate finance · mortgage lending · civil procedure · remedies

QUESTIONS PRESENTED

1. Whether U.S. Bank, as assignee of the mortgage loan, was shielded as a matter of law from liability for claims arising from the loan's allegedly predatory origination.
2. Whether disputed facts existed as to whether the loan was a high-cost home mortgage loan under the Predatory Home Loan Practices Act.
3. Whether disputed facts existed as to whether the lender's origination of the loan violated G. L. c. 93A.
4. Whether disputed facts existed as to whether the mortgage transaction was unconscionable.
5. Whether disputed facts existed as to whether the refinancing violated the Borrower's Interest Act.
6. Whether the plaintiffs were entitled to a jury trial on the surviving claims at that stage of the proceedings.

HOLDINGS

1. An assignee of a high-cost home mortgage loan may be subject to all affirmative claims and defenses that the borrower could assert against the original lender, including claims under G. L. c. 93A and the Borrower's Interest Act and the defense of unconscionability. U.S. Bank did not establish as a matter of law that it was protected from such liability.
2. Summary judgment for the servicer was properly affirmed because the record did not show that the servicer was an assignee or establish another basis for its liability.
3. Summary judgment for the bank was improper because a genuine dispute existed over whether the loan's points and fees exceeded the statutory threshold.
4. A fixed-rate mortgage is not categorically outside the scope of predatory-loan liability under G. L. c. 93A. The relevant question is whether the lender should have recognized at origination that the borrowers were unlikely to repay the loan, and disputed facts required trial rather than summary judgment.
5. Summary judgment on unconscionability was improper because the record contained material factual disputes concerning oppression, unfair surprise, bargaining disparity, the borrowers' circumstances, and the unaffordability of the loan.
6. Summary judgment for the bank was improper because the record presented a triable issue whether refinancing a home loan obtained approximately nine months earlier, with payments exceeding the borrowers' total income, was in the borrowers' interest.
7. The court declined to decide the jury-trial issue because no Superior Court judge had yet ruled on it and appellate review was premature.

KEY QUOTATIONS

> *“the plain language of the provision, subjecting assignees to “all” affirmative claims, not just claims brought under the act, see G. L. c. 183C, § 15 (a), demonstrates that the Legislature intended a broad scheme of liability for assignees of high-cost home mortgage loans.”* (782)

> *“The holding of Fremont was that [G. L. c.] 93A prohibits ‘the origination of a home mortgage loan that the lender should recognize at the outset that the borrower is not likely to be able to repay.’”* (786)

> *“A contract that is unenforceable because it is unconscionable does not become enforceable simply by virtue of being assigned from one party to another.”* (788)

FACTUAL BACKGROUND

The plaintiffs refinanced their Haverhill home in 2006 through Aegis Lending Corporation with a $249,000 fixed-rate mortgage carrying a 10.315 percent interest rate and monthly payments of $2,573.02. Although the lender possessed documentation showing that Peter earned approximately $1,900 per month and that Susanne was unemployed, the loan application listed Peter's monthly income as $5,900, and the payment exceeded the plaintiffs' combined monthly income by more than $600. The loan was assigned to U.S. Bank as trustee and serviced by Select Portfolio Servicing; after the plaintiffs defaulted, the bank foreclosed and sold the property in November 2008.

PROCEDURAL HISTORY

The plaintiffs filed suit seeking damages and rescission based on alleged wrongful foreclosure, predatory lending, consumer-protection violations, Borrower's Interest Act violations, unconscionability, and emotional distress. The wrongful-foreclosure claim was dismissed by stipulation, and summary judgment was entered for the defendants on the intentional-infliction claim and later on the remaining claims. The plaintiffs' cross-motion for partial summary judgment and motion to alter or amend the judgment were denied. The Supreme Judicial Court affirmed judgment for the servicer, vacated and set aside judgment for the bank, and remanded.

DISPOSITION

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reversed_and_remanded
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REMAND INSTRUCTIONS

Proceed in the Superior Court consistent with the opinion on the surviving claims against U.S. Bank. Judgment for Select Portfolio Servicing, Inc. remains affirmed. The court did not decide the jury-trial issue because it had not yet been addressed by the Superior Court.

CASES CITED

- Premier Capital, LLC v. KMZ, Inc., 464 Mass. 467, 474-475 (2013)
- DeWolfe v. Hingham Ctr., Ltd., 464 Mass. 795, 799 (2013)
- SCA Servs., Inc. v. Transportation Ins. Co., 419 Mass. 528, 531 (1995)
- Commonwealth v. Fremont Inv. & Loan, 452 Mass. 733, 739, 748-749 (2008)
- Frappier v. Countrywide Home Loans, Inc., 645 F.3d 51, 53, 56 (1st Cir. 2011)

- Waters v. Min Ltd., 412 Mass. 64, 68 (1992)
- O'Connor v. Redstone, 452 Mass. 537, 550 (2008)
- Greco v. Probate & Family Court Dept., 422 Mass. 7, 9 (1996)
- Quincy Trust Co. v. Pembroke, 346 Mass. 730, 732 (1964)
- Ford Motor Credit Co. v. Morgan, 404 Mass. 537, 540, 545-546 (1989)
- St. Fleur v. WPI Cable Sys./Mutron, 450 Mass. 345, 350 (2008)
- Salvas v. Wal-Mart Stores, Inc., 452 Mass. 337, 373 (2008)
- Whitehall Co. Ltd. v. Merrimack Valley Distr. Co., 56 Mass. App. Ct. 853, 858 (2002)
- Commonwealth v. Jones, 417 Mass. 661, 664 (1994)
- Roberts v. Enterprise Rent-A-Car Co. of Boston, 438 Mass. 187, 192 (2002)
- Batchelder v. Allied Stores Corp., 393 Mass. 819, 822 (1985)
- Aspinall v. Philip Morris Cos., 442 Mass. 381, 394 (2004)
- Swanson v. Bankers Life Co., 389 Mass. 345, 349 (1983)
- Maillet v. ATF-Davidson Co., 407 Mass. 185, 193-194 (1990)
- Linthicum v. Archambault, 379 Mass. 381, 388 & n.12 (1979)
- Cooper v. First Gov't Mtge. & Investors Corp., 238 F. Supp. 2d 50, 55 (D.D.C. 2002)
- In re DiMare, 462 B.R. 283, 304 (Bankr. D. Mass. 2011)